

STATE OF NEW YORK

THE STATE TAX COMMISSION

In the Matter of the Application

of

HI-LO FOOD CENTERS, INC.

For revision or refund of franchise
tax assessed under Article 9-A of
the Tax Law for the privilege year
ended June 30, 1963.

Hi-Lo Food Centers, Inc., having filed appli-
cation for revision or refund for the privilege year
ended June 30, 1963 under Article 9-A of the Tax Law,
and a hearing having been held in connection therewith
at the office of the State Tax Commission in New York
City on October 18, 1966 before John J. Genevich,
Hearing Officer, at which hearing the taxpayer was
represented by David P. Segal, accountant, and the
record having been duly examined and considered by the
State Tax Commission,

It is hereby found:

- (1) That the taxpayer was incorporated under
the laws of New York State on July 19, 1956;
- (2) That it filed a report for the fiscal
year ended June 30, 1963 claiming a net operating loss
deduction of \$21,188.78 and paid a minimum tax of \$25.00;
- (3) That on the basis of information sub-
mitted, the net operating loss deduction was disallowed
resulting in a recomputed tax as follows:

Privilege Year ended June 30, 1963

Entire net income	\$21,188.78
Rate of tax	5 1/2%
Tax	\$ 1,165.38

(4) That the tax was recomputed on September 4, 1964, and application for revision or refund was filed on November 5, 1965;

(5) That the net operating loss deduction rider which accompanied the Federal return for the fiscal year ended June 30, 1963 listed Federal net operating losses as follows:

<u>Fiscal Year Ended</u>	<u>Net Operating Loss</u>
June 30, 1959	\$ 411.15
June 30, 1960	882.18
June 30, 1961	25,458.82
June 30, 1962	67,277.86

(6) That the same rider indicated that the net operating losses for the fiscal years ended June 30, 1959 and June 30, 1960 and part of the net operating loss for the fiscal year ended June 30, 1961 were applied to offset Federal taxable income of \$21,163.78 for the fiscal year ended June 30, 1963, leaving \$5,588.37 of the June 30, 1961 loss and loss of \$67,277.86 for the fiscal year ended June 30, 1962 available as a carryforward to subsequent years;

(7) That Section 172 of the 1954 Internal Revenue Code provides for a net operating loss deduction;

(8) That Section 208.9(f) of Article 9-A of the Tax Law provides that "a net operating loss deduction shall be allowed which shall be presumably the same as the net operating loss deduction allowed under section one hundred seventy-two of the internal revenue code of nineteen fifty-four, except that * * *, (2) such deduction shall not include any net operating loss sustained during any taxable year beginning prior to January first, nineteen hundred sixty-one * * *."

Upon the foregoing findings and upon all of the evidence presented, it is hereby

DETERMINED:

(A) That only the amounts of the Federal net operating losses for the fiscal years ended June 30, 1959, June 30, 1960 and June 30, 1961 were necessary to reduce Federal taxable income for the fiscal year ended June 30, 1963 to zero;

(B) That under the provisions of clause (3) of Section 208.9(f) of Article 9-A of the Tax Law, the net operating losses for the fiscal years ended June 30, 1959, June 30, 1960 and June 30, 1961 are required to be excluded in computing the net operating loss deduction for state purposes;

(C) That, accordingly, the taxpayer is not entitled to deduct the net operating loss for the fiscal year ended June 30, 1962;

(D) That the tax as set forth in item (3) above is affirmed as assessed;

(E) That the aforesaid tax does not include taxes or other charges which are not legally due.

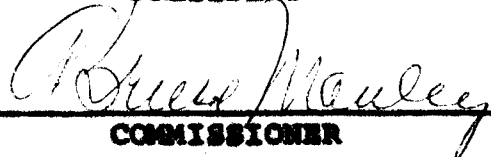
Dated: Albany, New York

this 9th day of March 1970

THE STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER